

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARVIN W. THOMPSON,

Plaintiff,

VS.

REGIONAL WEST MEDICAL CENTER,

Defendant.

8:06CV581

ORDER

This matter is before the court on the defendant's request for place of trial in North Platte, Nebraska (Filing No. 6). The defendant filed an affidavit attached to the request in support of changing the place of trial from Omaha to North Platte, Nebraska. **See** Filing No. 6. The plaintiff filed a response (Filing No. 8) stating he has no position regarding the defendant's request.

BACKGROUND

According to the allegations in the complaint, the plaintiff alleges racial discrimination in employment and retaliation pursuant to 42 U.S.C. §§ 2000e-2 and 2000e-3, and Nebraska law. **See** Filing No. 1. The defendant states the plaintiff was employed by the defendant in its Scottsbluff, Nebraska facility. **See** Filing No. 6 - Hofmeister Aff. Further, the majority of witnesses are residents of Scotts Bluff County, Nebraska. **Id.** Accordingly, the defendant argues trial in North Platte will be more convenient for the parties and witnesses in this case. **Id.** The plaintiff is a resident of Gering, Nebraska. **See** Filing No. 1. Counsel for the parties have their offices in Denver, Colorado, and Scottsbluff, Nebraska.

The plaintiff did not specifically request a location for trial in his complaint, but filed the complaint through the Omaha, Nebraska division. **See** Filing No. 1. Based on the location of filing, the Clerk of Court set the matter for trial in Omaha. **See** NECivR 40.1(c). In its answer, the defendant made a request for trial to be held in North Platte, Nebraska. **See** Filing No. 6.

ANALYSIS

The relevant local rule, NECivR 40.1(b) provides:

The plaintiff at the time of filing a complaint in a civil action . . . shall make written request for trial of the case at Omaha, Lincoln, or North Platte. Each defendant or third-party defendant at the time of filing that defendant's first pleading in a civil action, . . . may file a written request for trial at Omaha, Lincoln, or North Platte. If the request is for a place different from that requested by the plaintiff, third-party plaintiff, or removing party, it must be accompanied by a supporting affidavit.

In deciding the place of trial "the judge shall give consideration to the convenience of litigants, witnesses and counsel." NECivR 40.1(b)(2). The party seeking to change the place of trial within this district bears the burden of establishing that the transfer should be granted. **See** NECivR 40.1(b); **compare** *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 119 F.3d 688, 695 (8th Cir. 1997) (movant bears burden under section 1404(a)).

The convenience of the parties and witnesses, on the basis of the affidavit before the court, appears to favor North Platte. Additionally, the convenience of counsel also appears to favor trial in North Platte as compared to Omaha. The relative convenience of trial in North Platte outweighs any convenience of having trial in Omaha. After reviewing the materials submitted by the parties at this time, the court finds that, upon consideration of all factors pursuant to NECivR 40.1(b)(2), the place of trial should be North Platte, Nebraska. The matter will not be reassigned to alternate judges based on the change in located of trial. Upon consideration,

IT IS ORDERED:

1. The defendant's request for place of trial to be North Platte, Nebraska (Filing No. 6) is granted.
2. The Clerk of Court shall amend the docket in this matter to reflect the place of trial is North Platte, Nebraska.

DATED this 8th day of November, 2006.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge